

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 2146 - SB 2109

March 16, 2018

SUMMARY OF BILL: Requires the Tennessee Historical Commission (THC), on behalf of the state, to acquire by eminent domain all properties that were owned by any local government on or after April 1, 2013, which would have fallen under the scope of the Tennessee Heritage Protection Act (THPA), with all costs for such condemnation reimbursed to the state by the local government who was the previous owner of the property. Requires the state to be listed as a joint owner of all properties owned by local governments which fall under the scope of the THPA. Provides that any official who knowingly violates or attempts to violate the THPA is subject to ouster from office.

ESTIMATED FISCAL IMPACT:

Increase State Revenue – Exceeds \$15,000/Per Occurrence/Attorney General

Increase State Expenditures –
Exceeds \$15,000/Per Occurrence/Attorney General

Increase Local Expenditures – Exceeds \$15,000/Per Occurrence*

Other Fiscal Impact – For each property reacquired through eminent domain, there will be a mandatory increase in local expenditures estimated to exceed \$100 annually for maintenance of such property. For each instance of ouster, it is estimated to result in a mandatory increase in local expenditures exceeding \$500.*

Assumptions relative to THPA properties:

- The THPA was enacted on April 1, 2013 through Public Chapter 75 and has been amended twice since its enactment.
- For the purposes of the proposed legislation, properties which fall under the scope of the THPA are, pursuant to Tenn. Code Ann. § 4-1-412:
 - Any public real property or park, preserve, or reserve located on property owned, leased, rented, managed, or maintained by any local government that has been named or dedicated in honor of any historic conflict, entity, event, figure, or organization; and

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- Any statue, monument, memorial, bust, nameplate, plaque, artwork, flag, historic display, school, street, bridge, or building that has been erected for, named, or dedicated on property owned, leased, rented, managed, or maintained by any local government in honor of any historic conflict, entity, event, figure, or organization.
- The proposed language would apply to all properties which fall under the purview of the THPA which are currently owned by local governments and applies retroactively to such properties that were owned at any point after the initial enactment of the THPA on April 1, 2013.
- For all properties under the THPA which are currently owned by local governments, the state shall be listed as a joint owner. The proposed language will require the local government currently owning such property to be responsible for all costs associated with maintaining the property; therefore any increase in state government expenditures is estimated to be not significant.
- For these properties, the local governments owning will currently have the responsibility of maintaining; therefore, any increase in local government expenditures is estimated to be not significant.

Assumptions relative to eminent domain proceedings:

- The proposed language would require the THC to exercise eminent domain to recover any properties subject to the THPA which were owned by local governments as of April 1, 2013, but which are no longer owned by the local government.
- The previously owning local government will be responsible for reimbursing the state for all costs associated with the eminent domain proceeding and will then be responsible for maintaining the property, once recovered by eminent domain.
- The Attorney General will represent the THC in proceedings of eminent domain. Any counsel representing the state in an eminent domain proceeding from the Attorney General's office will be salaried; therefore hourly representation rates will not apply. However, the local government will be required to reimburse the state for costs associated with any travel, court reporter costs, expert witnesses, and the cost of the property will apply.
- While costs associated with the eminent domain proceeding will vary from case to case, based on information provided by the Attorney General, costs are expected to exceed \$15,000 per proceeding.
- The state will pay costs during the eminent domain proceeding and be reimbursed by local governments; therefore for each eminent domain proceeding there will be an increase in state expenditures for the Attorney General estimated to exceed \$15,000 and an equal and corresponding mandatory increase in local government expenditures estimated to exceed \$15,000 as well as an increase in state revenue to the Attorney General estimated to exceed \$15,000.
- Once any land is acquired by eminent domain, the local government will be responsible for all costs associated with maintaining the property. While such costs will vary based on the property, the increase in local expenditures is estimated to exceed \$100 annually.

Assumptions relative to ouster:

- The proposed language would make any willful violation or attempt at a violation of the THPA grounds for ouster from office.
- Under current law, pursuant to Tenn. Code Ann. § 8-47-103, it is the duty of the attorney general, district attorneys general, county attorneys, and city attorneys, within their respective jurisdictions, to investigate complaints of ouster and institute proceedings in the circuit, chancery, or criminal court of the proper county, to oust such officer from office.
- A majority of local governments do not employ a full-time attorney, but hire attorneys at an hourly rate when needed.
- Due to multiple unknown factors, such as the number of ouster proceedings which will be initiated, if such attorney is a salaried employee or paid on an hourly basis, a precise mandatory increase in local government expenditures associated with an investigation and ouster proceedings cannot reasonably be determined, but is estimated to exceed \$500 per ouster proceeding.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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